Reserved Judgment

IN THE HIGH COURT OF UTTARNCHAL AT NAINITAL

Criminal Appeal No. 552 of 2001
(Old No. 699 of 1992)

1. Diwan Singh S/o Chatur Singh

2. Smt. Bachuli Devi W/o Diwan Singh
Residents of Village Soopi,
Police Station, Patti Satbunga,
District Nainital.

…… Appellants

Versus

The State ……. Respondent

Mr. Ajay Singh Bisht, Advocate for the appellants.
Mr. H.C. Pandey, Asstt. Government Advocate of the respondent State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'be Prafulla C. Pant, J.

Dated June 20, 2006

[Per Hon'ble Prafulla C. Pant, J.]

This appeal , preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (Hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 08.04.1992, passed in Sessions trial No. 141 of 1988, by the then learned Special Judge/Addl. Sessions Judge, Nainital, whereby appellants Diwan Singh and Bachuli Devi have been convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and each one of them has been sentenced to imprisonment for life.

2) Prosecution story in brief is that the accused/ appellants Diwan Singh, Bachuli Devi and their son Nar Singh are residents of Village Soopi, Patti Satbunga, District Nainital. Prem Singh (deceased) was also resident of the same village. He was real brother of appellant Diwan Singh. On 14.07.1986, at about 5:30-6:00 P.M., Prem Singh returned to his home in the village after finishing his days work. Meanwhile, accused/ appellant Diwan Singh and his wife appellant Bachuli Devi also returned from the fields to their home in the village. Appellant Bachuli Devi accused sons of Prem Singh (deceased) that they had stolen wheat flour and potatoes from her house. Prem Singh objected to the allegations and they quarreled for a while. Thereafter, when Prem Singh entered in his house, appellants Diwan Singh, Bachuli Devi and their son Nar Singh followed him in his house and alleged that he has become inimical to them. And, appellant Diwan Singh caught hold of head of Prem Singh and appellant Bachuli Devi administered poison to him by pouring contents of bottle of 'NUVAN' (an insecticide) in his mouth. Meanwhile, their son Nar Singh kept the hands of Prem Singh held together. However, P.W. 2, Leela Devi, daughter of the deceased succeeded in snatching the empty bottle of poison from appellant Bachuli Devi. As soon as the accused persons left Prem Singh in his house, he told his wife P.W. 1, Parwati Devi that the accused persons have administered poison to him. He requested his wife to take him to the doctor. Parwati Devi (P.W. 1) took Prem Singh with her and when they were on way to doctor, Prem Singh complained that he is now unable to walk further and sat on the way. He asked his wife to call the

doctor. On this, P.W. 1, Parwati Devi went to look for doctor and told about the incident to one Pratap Singh, who asked her to call her ‘Chachia’ father-in-law. When P.W. 1, Parvati Devi returned after informing about the incident she found that Prem Singh had already died. Meanwhile, people started gathering around the place where Prem Singh had died. On the next day i.e. 15.07.1986, P.W. 1, Parwati Devi got the First information Report (Ext. A-1) written through P.W. 4, Harak Singh. And, submitted the same with Patti Patwari Satbunga (In Uttaranchal hills, in certain areas, Revenue officers are given police powers by the State). P.W. 6, Bachchi Singh, Patti Patwari, Satbunga, prepared the check report (Ext. A-8) on 15.07.1986 of the First Information Report (Ext.A-1) and registered the crime. He went to the spot on the very day and took the dead body in his possession. He prepared the inquest report (Ext. A-3), Police form No. 13 (Ext. A-4), photo sketch of the dead body (Ext. A-5), police form No. 33 (Ext. A-6), which is a letter requesting the Chief Medical Officer for postmortem examination of dead body. P.W. 7, Dr. M.N. Dhondiyal, conducted the autopsy on the dead body on 16.07.1986 and prepared postmortem examination report (Ext. A-13). Meanwhile, Investigating Officer prepared site plan (Ext. A-11) and, after recording statement of witnesses and concluding the investigation, the Investigating Officer, P.W. 6, Bachchi Singh, submitted charge sheet (Ext. A-12) against the accused persons Diwan Singh, Bachuli Devi and their son Nar Singh.

3) The concerned Magistrate after registering the charge sheet summoned the accused persons and after providing

necessary copies, as required under Section 207 of the Cr.P.C to the accused persons, committed the case to the court of Sessions for trial. The learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of the I.P.C. against accused/appellant Bachuli Devi and similar charge was framed against accused/appellant Diwan Singh and Nar Singh. All the three accused/appellants pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1, Parwati Devi, informant, eyewitness and wife of the deceased; P.W. 2, Leela Devi, eyewitness and daughter of the deceased; P.W. 3, Paan Singh, witness of the preparation of the inquest report; P.W. 4, Harak Singh, scribe of the F.I.R. (Ext. A-1); P.W. 5, Tribuhwan Singh, Patti Patwari of neighbouring Patti Purvi Aagar, who assisted the Investigating Officer; P.W. 6, Bachchi Singh, the Investigating Officer and P.W. 7, Dr. M.N. Dhondiyal, who conducted the autopsy and prepared postmortem examination report (Ext. A-13). Apart from this the report of Forensic Science Laboratory (Ext. A-14) received from the Forensic Science Laboratory on viscera preserved from the dad body was also placed on the record. The oral and documentary evidence was put to the accused persons to which they replied that evidence is wrong and they have been falsely implicated in the case. No evidence in defence given. The trial court, after hearing the arguments of prosecution and that of the defence, found accused Diwan Singh and Bachuli Devi guilty of the charge of offence punishable under Section 302 of the I.P.C., and after hearing on sentence, sentenced each of them to imprisonment for life, However, the trial court did not find charge proved

beyond reasonable doubt as against Nar Singh (son of the appellants).

4) Both the convicts have preferred this appeal before the Allahabad High Court in the year 1992 from where it is transferred in this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) We heard learned counsel for the parties and perused the entire evidence on record.

6) Before further discussion, it is pertinent to mention here, about the postmortem report and the report received from the Forensic Science Laboratory. Postmortem examination report (Ext. A-13), prepared by P.W. 7, Dr. M.N. Dhondiyal, shown that there was no ante mortem injury on the dead body. However, faecal matter was present at the anus and there was evidence of blood in both the nostrils and buccal cavity. On internal examination, pleura was found congested, lungs were slightly congested. Right side of heart was full of blood but left was empty. Digested food and foul smelling gases were found present in the small intestine. However, as to the cause of death, according to the Medical Officer, it could not be ascertained from the postmortem examination. As such, viscera was preserved and sealed. Ext. A-14 (report received from the Forensic Science Laboratory, Agra) shows that the viscera of the dead body was found containing insecticide in items from (i) stomach (ii) piece of intestine (iii) piece of liver (iv) piece of gall bladder (v) piece of kidney. However, no poison was found in piece of spleen. The above report received from the Forensic

Science Laboratory read with the statement of P.W. 6, Bachchi Singh (Investigating Officer), who has stated that the viscera in the sealed cover was sent to the Forensic Science Laboratory, Agra under orders of the Chief Judicial Magistrate, corroborates the prosecution story that Prem Singh has died homicidal due to the poison.

7) Now, this Court has to examine whether it is proved or not that the poison was administered by the appellants? P.W 7, Dr. M.N. Dhondiyal, in his statement on oath has stated that 'NUVAN' is a poison and if such poison is taken by someone or administered to someone it can cause death of such person. P.W. 1, Parwati Devi has stated that on the day of incident her husband Prem Singh (deceased) came back to his house, at about 5:30 P.M., after finishing days work. AT about same time, appellant Diwan Singh and appellant Bachuli Devi an their son Nar Singh also came their house, from their fields. This witness further states that appellant Bachuli Devi accused Prem Singh that his sons have stolen potatoes and wheat flour from their house and quarrel started. Abuses were hurled at each other. After Prem Singh entered in his house, at about 7:30 P.M., appellants Diwan Singh and Bachuli Devi along with their son Nar Singh came in the house of the deceased. Appellant Diwan Singh caught hold of head of Prem Singh alleging that the deceased has become his enemy. His son Nar Singh kept hold of hands of the deceased and his mother appellant Bachuli Devi took out bottle of poison 'NUVAN' and administered the same in the mouth of the deceased. P.W. 1, Parwati Devi further states that her husband asked her to take him to a doctor. When she took

him some 30-40 steps from the house, Prem Singh (deceased) sat down on the way and told her that he is unable to walk further. He asked his wife to call the doctor there itself. The witness, P.W.1, Parwati Devi, further states that she could not find the doctor and informed about the incident to one Pratap Singh, who asked her to inform her father-in-law Harak Singh. She came back towards her house and found that by then her husband has died. Lastly, this witness states that next day she got the First Information Report (Ext. A-1) lodged with the help of P.W. 4, Harak Singh with Patti Patwari, Satbunga.

8) P.W. 2, Leela Devi, daughter of the deceased, has corroborated the statement of his mother P.W. 1, Parwati Devi, narrating the prosecution story that appellant Diwan Singh caught hold of head of the deceased and appellant Bachuli Devi administered poison in the mouth of Prem Singh. She further states that she snatched the empty bottle from the hands of Bachuli Devi. The trial court acquitted accused Nar Singh on the ground that he is a minor son of the appellants and it cannot be believed that he kept hold of hands of deceased while the poison was being administered to the deceased. As such, part of statement of P.W. 1, Parwati Devi and P.W. 2, Leela Devi is not believed by the trial court.

9) On behalf of the appellants it is argued that it cannot be believed that the deceased who was 32 years old, as is clear from the postmortem report (Ext. A-13), could not resist the administering of poison to him, as narrated by prosecution. It is further argued that the deceased could have used his legs to kick the appellants away as they were

not armed with any weapon. In our opinion, there appears to be substance in the argument of learned counsel for the appellants, as not only the deceased could have resisted administering of poison by kicking at the appellants but he could have also spit out the poison from his mouth instead of swallowing the same. The above fact certainly creates a reasonable doubt in the prosecution story.

10) Mr. Ajay Singh Bisht, learned counsel for the appellants further contended that it is hard to believe that had P.W. 1. Parwati Devi, wife of the deceased, and P.W. 2, Leela Devi, daughter of the deceased, seen the occurrence they would have definitely come to the rescue of the deceased and fought with their might against the unarmed appellants. Again, we do not se the contention without substance, for the reason, that it is very unnatural for a wife that she would only witness her unarmed brother-in-law and sister-in-law committing murder of her husband and would do nothing to save her husband from the culprits. This further creates a reasonable doubt in the prosecution story, as brought before the Court.

11) It is also submitted on behalf of the appellants that according to P.W. 6, Bachchi Singh, the Investigating Officer, the dead body of the deceased was found at a distance from a pathway, in a field as is also clear from the site plan (Ext. A-11). In this connection, it is further submitted that there is no explanation how the dead body from pathway had reached in the field. Apart from the above fact, on examination of the oral evidence, we found there is yet another major point of contradiction creating reasonable doubt in the prosecution story. And, that

contradiction is that P.W. 1, Parwati Devi says that the poison was administered to the deceased inside the house while P.W. 2, Leela Devi, in her cross examination says outside the house, where the quarrel has taken place, appellant Diwan Singh caught hold of head of the deceased (Prem Singh) and appellant Bachuli Devi administered the poison to him. Had the difference in the place of occurrence been in a field or in an open place, it could have been said that the contradiction is natural but contradiction as to the place of occurrence, whether inside the house or outside the house, is major contradiction, particularly, in the circumstances of this case.

12) For the reasons as discussed above, on appreciation of evidence as a First Appellate Court, we are of the opinion, that it cannot be said that charge of offence punishable under Section 302 of the I.P.C. is proved beyond reasonable doubt, as against the appellants. Therefore, they are entitled to the acquittal from the charge on the ground of benefit of reasonable doubt. Accordingly, the appeal deserves to be allowed. The appeal is allowed. Both the appellants are acquitted of the charge of offence under Section 302 the I.P.C. They are on bail. They need not to surrender.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. June 20, 2006

H. Negi